

# Township of Brock Corporate Policy



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**Policy Name:** Leasing Policy

**Policy Type:** Finance

**Policy Number:** F7

**Reference:** Resolution No. 3-6

**Date Approved:** April 18, 2016

**Date Revised:**

**Approval By:** Finance Committee

**Point of Contact:**

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## 1. Background

The Corporation of the Township of Brock is committed to providing service to residents in a fiscally responsible manner. With this commitment in mind, the use of leasing as a source of financing as described in the Township's procurement by-law may be considered if it is proven to be the most economical method of financing available.

## 2. Purpose

The purpose of this policy is to establish the procedures for evaluating and entering into lease agreements, including the requirements for reporting to Council. Compliance to this policy will ensure that due diligence is undertaken by staff in the review of the proposed leasing arrangements and that Council is provided with full disclosure on the impact of these leases prior to entering into any such lease agreements.

## 3. General Policy

The Township of Brock recognizes that, in certain circumstances, it may be economically advisable to enter into a lease to acquire the rights to use capital property/equipment or to finance a capital undertaking, rather than making an outright purchase. It is the Township's objective to use leasing where it is financially advantageous over other forms of financing or where it provides a benefit in the acquisition or use of an asset (e.g. rapid technological change).

The Township also recognizes that the use of leasing includes a number of inherent financial and non-financial risks, including but not limited to the following:

- cost of arranging and entering into a lease agreement

- lease term: a lease is a contractual agreement and generally non-cancellable prior to its expiration
- imputed interest costs may be higher than stated depending on the value assigned to the asset and the timing of payments
- lost residual value and/or cost of ownership of the asset at the end of the lease
- payment timing may vary from traditional debt
- restrictions or covenants on use and maintenance of the asset during the lease
- long and short term budget implications

#### 4. Guiding Principles

The Municipal Act, 2001, section 401 (8) (1) states that a municipality may enter lease financing agreements for the purpose of obtaining long term financing of a capital undertaking of the municipality. Section 401 (8) (2) states that the municipality must have a statement of policies and goals regarding lease financing agreements that extend beyond the term of Council and that Council must be given advice on the proposed lease prior to any agreement being made. Section 401 (8) (3) requires all lease financing agreements to include a schedule of all fixed payments, if any, required by the agreement and that may be required by any extension or renewal of the agreement.

#### 4. Definitions

In this policy the following definitions are used:

- a) **“Financing Lease”** means a lease allowing for the provision of municipal capital facilities if the lease may, or will require payment by the municipality beyond the term for which the Council was elected. Financing Lease includes both Material Leases and Non-Material Leases.
- b) **“Lease Financing Agreement”** means a lease allowing for the provision of Municipal Capital Facilities if the lease may or will require payment by the Corporation beyond the current term of Council. Lease Financing Agreement includes both Material Leases and Non-Material Leases.
- c) **“Lease” and “Leasing”** means both Financing Leases and Lease Financing Agreements.
- d) **“Material Lease”** means a lease that would result in a Material Impact for the Township.
- e) **“Non-Material Lease”** means a lease which would not result in a Material Impact for the Township.
- f) **“Material Impact”** means costs or risks that significantly affect or would reasonably be expected to have a significant effect on the Township’s Debt and Financial Obligation Annual Repayment Limit as prescribed under Ontario Regulation 799/94, as amended, greater than 10%.

- g) **“Combined Material Impact”** means that the costs or risks of a proposed Non-Material Lease which, when combined with all other Non-Material Leases entered into or proposed to be entered into a particular year would result in a Material Impact.
- h) **“Municipal Capital Facilities”** include land (as defined in the *Assessment Act*), works, equipment, machinery and related systems and infrastructure.

## **6. Scope and Responsibility – Material Lease**

### **6.1 Treasurer’s Role**

Before entering into a Material Lease, the Treasurer shall prepare a report to Council with a recommendation, assessing, in the opinion of the Treasurer, the costs and financial and other risks associated with the proposed lease. The report will address circumstances as of the date the report is made and will summarize information for the entire term of the lease including any possible extensions and renewals. The report will include:

- a) a comparison between the fixed and estimated costs and the risks associated with the proposed lease and those associated with other methods of financing;
- b) a statement summarizing, as may be applicable, the effective rate or rates of financing for the lease, the ability for lease payment amounts to vary, and the methods or calculations, including possible financing rate changes, that may be used to establish that variance under the lease;
- c) a statement summarizing any contingent payment obligation under the lease that in the opinion of the Treasurer would result in a Material Impact for the municipality, including lease termination provisions, equipment loss, equipment replacement options and guarantees and indemnities;
- d) a summary of the assumptions applicable to any possible variations in the lease payment and contingent payment obligations; and
- e) any other matters that the Treasurer or Council considers advisable.

The Township’s Solicitor shall be consulted to provide Council with legal advice on the proposed lease. If the scope of the proposed transaction warrants, the Treasurer may also recommend that financial advice with respect to the proposed lease be obtained from a source that is independent of the Township. The cost of such legal and financial advice shall be taken into account when assessing the costs and risks of the lease.

Prior to entering into the Lease, the Township must advise the Region of Durham in writing of the proposed lease.

### **6.2 Council’s Role**

Council is responsible for the following:

- a) Must give its assessment of the Treasurer’s report, including whether the costs of financing for the proposed lease are lower than other methods of financing available to

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the municipality, and whether the risks associated with the proposed lease are reasonable.

- b) In considering the report and recommendation from the Treasurer and the advice from the Township Solicitor, Council is responsible for ensuring that legal and financial advice has been obtained, and must consider whether the scope of the proposed lease warrants further legal or financial advice from an independent source.
- c) If the Council approves entering into a Lease, such approval shall be by by-law.

## **7. Scope and Responsibility – Non-Material Lease**

A Non-Material Lease is exempt from the requirements of sections 6.1 and 6.2 of this policy if it would not result in a Combined Material Impact. Although the Council reporting requirements are less stringent for Non-Material Leases, these leases must still adhere to the following process:

- a) The report must include a statement that in the opinion of the Treasurer, the proposed lease is a Non-Material Lease and that the proposed lease, in combination with all other Non-Material Leases would not result in a Combined Material Impact. Council must give its assessment of the report's conclusions as to whether the lease is Non-Material and whether the risks and costs of all Non-Material Leases would result in a Material Impact on the municipality.
- b) The Township's Solicitor shall provide legal advice on the proposed lease and the cost of such advice shall be taken into account when assessing the costs and risks of the lease.
- c) Prior to entering into the Non-Material Lease, the Township must advise the Region of Durham in writing of the proposed lease.
- d) The Non-Material Lease must be approved by By-Law.

## **8. Annual Reporting**

Once per fiscal year, the Treasurer shall prepare a report to Council containing the following:

- a) a description of the estimated proportion of the total financing arrangements of the municipality that is undertaken through Leases to the total long term debt of the municipality;
- b) a description of the change, if any, in the estimated proportion of the total financing arrangements since the previous year's report;
- c) a statement by the Treasurer as to whether, in his or her opinion, all Leases were made in accordance with the statement of leasing policies and goals adopted by the municipality; and
- d) any other information that Council may require or that in the opinion of the Treasurer should be recorded.

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*\*Adopted by Resolution No. 3-6 at the April 18, 2016 Finance Committee meeting. Finance Committee meeting*